



Legal Obligations for Business by Foreign Companies in India

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Legal Obligations for Business by Foreign Companies in India

A. Legal Obligations for FDIs by Foreign Companies in India

1. Introduction on Investments by Foreign Companies in India

- (i) Foreign companies are permitted to **invest** in **India** in accordance to Foreign Direct Investments (**FDIs**) policies as issued by the Govt. of India (**Govt.**) through issue of **consolidated circulars** and **master directions** by the **RBI** and also amended time to time.
- (ii) Foreign companies are required to **obey** the **guidelines** as issued by the RBI under FEMA, 1999 and **Industrial Policy** as issued by the Govt. for investments in India.

2. Legal obligations for the FDIs in India

- **Indian companies** are permitted to **receive FDIs** under the **Govt. approval route** and **automatic route**:

(i) **FDIs Under Government approval route**

- (a) FDIs in the **11 sectors** are required under the **prior Govt. approval route**.
- (b) Activities of these **11 sectors** are **not permitted** under the **automatic route**.
- (c) **List of the 11 sectors**:
 - (ca) Public sector **Banks** where FDIs are exceeding **20%**
 - (cb) **Broadcasting** Content Services like FM Radio, up-linking of news and current affairs TV Channels where FDIs are exceeding **49%**
 - (cc) Uploading or Streaming of **News** and Current affairs through digital media FDIs where FDIs are exceeding **26%**
 - (cd) Investments by Foreign **airlines** where FDIs are exceeding **49%**
 - (ce) Core Investment Company (**CIC**) where FDIs are exceeding **0%**
 - (cf) **Food Products Retail Trading** where FDIs are exceeding **0%**



(cg) **Mining and Minerals** separations of titanium bearing minerals and ores, its value addition and integrated activities where FDIs are exceeding **0%**

(ch) **Multi-Brand Retail Trading** where FDIs are exceeding **51%**

(ci) **Print Media** like publications, printing of scientific, technical **magazines**, specialty journals, periodicals and facsimile edition of foreign newspapers where FDIs are exceeding **0%**

(cj) **Print Media** like publishing of **newspaper**, periodicals and Indian editions of foreign magazines dealing with news and current affairs where FDIs are exceeding **26%**

(ck) **Satellite** as establishment and operations where FDIs are exceeding **0%**

(ii) FDIs Under Automatic Route

(a) **100%** FDIs are permitted **under the automatic route without prior approval of the Govt. or the RBI** in approximately **more than 90% sectors** or activities

(b) FDIs are permitted under the **automatic route in the agricultural** and mining activities **including** diamond, gold, silver and precious ores but **not including** titanium bearing minerals and its ores

(iii) FDIs under Prohibited Sectors

● **FDIs are not permitted under the prohibited sectors:**

(a) **Atomic Energy**

(b) **Lottery business**

(c) **Gambling and betting**

(d) **Manufacturing of cigars, cheroots, cigarillos, cigarettes of tobacco or tobacco substitutes**

(e) **Chit funds**

(f) **Nidhi company**

(g) **Real Estate**

(h) **Trading in Transferable Development Rights (TDRs)**



(iv) FDIs under Partial Automatic Route and Partial Government approval Route

FDIs are permitted under **Partial Automatic Route** and **Partial Government approval Route** in **some specified sectors** like public sector **banks** where **20%** FDIs are permitted under **automatic route** and **balance 80%** FDIs are permitted under **govt. approval route**.

3. FDIs Policy for business by Foreign Companies in India

- (i) (a) Govt. has **opened up Indian economy** for investments by the foreign investors **(foreign companies)** in **1991**.
- (i) (b) Govt. has **created more than 10 million jobs** through FDIs in India.
- (ii) Govt. has **issued consolidated FDIs policy on October 15, 2020** to regularly update and **to align with the economic** and regulatory situation of the India.
- (iii) Govt. has **permitted the FDIs in more than 13 sectors** of the Indian economy and also further **simplify the process and limits of the FDIs** in the country and also put more FDIs proposals **under automatic route instead of prior Govt. approval route** where time and energy of the investors are saved.
- (iv) Govt. has also **increased the sectoral caps** and easing of the restrictions on the FDIs for the sectors where FDIs were **permitted under Govt. approval route**.
- (v) Govt. has also **introduced new and simpler online single point interface** for the FDIs as commonly known as Foreign Investment Facilitation Portal **(FIFP)** through replacing the earlier Foreign investment Promotion Board **(FIPB)**

4. Entry routes for business by Foreign Companies in India

● **Setup as corporate entity by the foreign companies in India**

(i) Indian Wholly Owned Subsidiaries (WOSs) 100% owned by the foreign companies

- (a) Foreign companies are permitted to **setup WOS** where **intellectual property rights of foreign parent company are not** to be **shared with the outsiders**.
- (b) Foreign companies are **not required** to obtain prior **govt. approval** where **100%** FDIs are permitted under the **automatic route**.



(c) Foreign companies are required to **report** to the **RBI** where **100%** FDIs are permitted under the **automatic route**.

(d) Foreign companies are permitted to **carry the commercial activities** in **accordance** to the companies' Memorandum and Articles of associations (**MOA**) under the Companies Act, **2013** and in **accordance** to the **guidelines** as issued by the **RBI** under the **FEMA, 1999**.

(ii) Indian Joint Ventures not 100% owned by the foreign companies

(a) Foreign companies are permitted to **setup Joint venture** where **intellectual property rights** of foreign parent company are to be **shared with the outsiders**.

(b) Foreign companies are **not required** to obtain prior **govt. approval** where **100%** FDIs are permitted under the **automatic route**.

(c) Foreign companies are required to **report** to the **RBI** where **100%** FDIs are permitted under the **automatic route**.

(d) Foreign companies are permitted to **carry the commercial activities** in **accordance** to the companies' MOA under the Companies Act, **2013** and in **accordance** to the **guidelines** as issued by the **RBI** under the **FEMA, 1999**.

(iii) Indian Limited Liability Partnerships (LLPs) 100% owned by the foreign companies

(a) Foreign companies are permitted to **setup LLPs without** Indian partners where **intellectual property rights** of foreign parent company are **not** to be **shared with the outsiders**.

(b) Foreign companies are permitted to **setup LLPs with** Indian partners where **intellectual property rights** of foreign parent company are to be **shared with the outsiders**.

(c) Foreign companies are **not required** to obtain prior **govt. approval** as foreign companies **not permitted** to setup LLPs where **100%** FDIs are **not permitted** under the **automatic route**.

(d) Foreign companies are permitted to **carry the commercial activities** in **accordance** to the Partnership agreements under the **LLP Act, 2008** and in **accordance** to the **guidelines** as issued by the **RBI** under the **FEMA, 1999**.

- **Setup as non corporate entity by the foreign companies in India**

- (i) **Indian Branch Office (BO) 100% owned by the foreign companies**

- (a) Foreign companies are permitted to established the BO with the **prior approval from the RBI** through AD-I Banks in India
 - (b) Foreign companies are permitted to carry out the following **commercial activities** through the BO in India:
 - (ba) **Export** or **Import** of goods and **procurement** of goods for export and sale of goods after import is permitted on **wholesale** basis
 - (bb) **Rendering** of professional or consultancy services
 - (bc) **Carrying** out research work in which parent company is **already** engaged
 - (bd) **Promotion** for technical or financial collaborations between Indian companies and parent company or group companies
 - (be) **Representation** the parent company or group companies in India
 - (bf) **Rendering** of Services for information technology and development of software in India
 - (bg) **Rendering** of technical **support** to the products as supplied by parent company or group companies
 - (bh) **Operating** the foreign **airline** or **shipping** activities in India.

- (ii) **Indian Liaison Office (LO) 100% owned by the foreign companies**

- (a) Foreign companies are permitted to established the LO **with** the **prior approval from the RBI** through AD-I Banks in India
 - (b) Foreign companies are permitted to carry the following activities through the LO in India:
 - (ba) **Representation** in India on **behalf of parent company** or group companies
 - (bb) **Promotion** the export or **import** from India
 - (bc) **Promotion** the technical or financial **collaborations** between **parent** or group companies and entity in India

(bd) *Acting* as communication *channel* between parent entity and entity in India

(iii) **Indian Project Office (PO) 100% owned by the foreign companies**

- (a) Foreign companies are permitted to open the PO **without** the prior **approval from the RBI**
- (b) Foreign companies are permitted to open the PO for the activities relating to a **specific project**
- (c) Foreign companies are permitted to open the PO subject to the certain **terms and conditions** in India:
 - (ca) Where **contracts** are **secured** from the **Indian companies** or **govt.**
 - (cb) Where **mandatory regulatory clearances** are obtained
 - (cc) Where projects are **funded through direct foreign inward remittances** from banking channels, **financed** by financial institutions or **banks**



B. Registration of Foreign Companies Working for business in India

1. Introduction on Registration - Section 379 under Companies Act, 2013

- **India** is a **fastest developing country** in the world. Other countries are desired to invest. India is actually a hub for doing business as the **cost of production** is **low** and also having **lots** of **domestic demands**.

(i) Definition of Foreign Company - section 2(42)

- (a) Company or body corporate like LLP etc. as **incorporated outside India** and having a **place of business in India** itself or through an **agent in physical** or in **electronic mode**
- (b) And also **conducting** any **business activity** in India in any other manner

(ii) Roles of the RBI

- The RBI is **permitting** the **foreign inward remittances** against FDIs in accordance to guidelines as issued by the RBI under FEMA, 1999

(iii) Registration with the office of ROC

- (a) Foreign companies are **mandatory required** to **submit** certain **documents** to the office of **ROC** for registration **within 30 days** from the **date of establishment** of **place of business** in **India** like WOS, JV, LLP, BO, LO or PO. Hence domestic company is **not required separately register** with **ROC** beside where **100%** FDIs are received by the domestic company.

(b) Documents for the Registration with the office of ROC

- The **certified copies** are to be **submitted** against the **registration** with the **office ROC** for the charter, statute, **memorandum** and **articles (MOA)** of the company or any **other instrument** as **constituting** or **defining** the **constitution** of the foreign companies outside India.

(c) Translation in English language

Certain documents are to be **translated** in **English Language** where original documents are **not in English language**:

- (ca) **Address** of **registered office** or **principal office** of Foreign Company



(cb) *List of directors and secretary* of the Foreign Companies along with particulars as may be prescribed by the MCA in India.

(iv) Name of the Indian Resident as authorized person in India

Foreign companies in India are **mandatory** required to provide the **name** and **address** of **resident authorized person** as residing for minimum **180** days in India to accept **service of the notices** or any **other** document as required by office of ROC for registration of the Foreign Companies in India.

(v) Address of Place of Business in India

Foreign companies in India are **mandatory** required to **provide** an **address** of the **Indian office** as **deemed** a principal **place of business** to the office of **ROC** for registration of the Foreign Companies in India.

(vi) Particulars of Previous Place of Business

Foreign companies in India are required to provide particulars to the office of ROC against any **previous office** as was **opened** and **closed**.

(vii) Declaration by the Foreign Companies

Foreign companies in India are required to provide the declaration that **director's** of the companies or **authorized representatives** as located in India are **not involved** or **convicted** or **debarred** from **Formation** of the **company** and for **performing management** activity in India or outside India

2. Procedure for Registration of the Foreign Company-Section 380

(i) Registration with office of the ROC

(a) Foreign companies in India are required to file to office of the ROC a **Form No. FC-1** along with **certain** documents within **30** days from the **date of establishment** of **place of business** in India as **WOS, JV, LLP, BO, LO** or **PO**.

(b) And also to submit a copy of **approval** from the **RBI** or from any other **regulator** where any approval is required to **establish** a **place of business** in India or a **declaration** from the authorized representative of Foreign Companies that **no approval** is **required**.

(ii) Filing of alteration with office of the ROC

Foreign companies are required to file a **Form No. FC-2** along with **certain** documents with- in **30** days from date of **alteration** with office of the **ROC**

3. Financial Statements of Indian Business Operations -Section 381

(i) Preparation of the Standalone Financial Statements

(a) Foreign companies in India are required to **prepare** the **financial statements** of the **Indian business operations** in accordance with **Schedule III** of the **Companies Act, 2013**

(b) And also to prepare the **documents** as **required** in accordance with the **Chapter IX** of the **Companies Act, 2013**

(ii) Preparation of the Consolidated Financial Statements

Foreign companies in India are required to submit with office of the ROC a copy of the **latest Consolidated** Financial Statements of the **parent Foreign Companies**.

(iii) Statement of Related Parties Transactions- Section 2(76)

(a) Foreign companies in India are required to **submit** a **statement** of the related parties' **transactions**.

(b) Related parties to Includes :-

(ba) **Foreign Company**

(bb) **Subsidiary** company of the Foreign Company

(bc) **Holding** company of the Foreign Company

(bd) **Firm** where the Foreign Company is a partner

(be) **Firm** where **subsidiary** of the Foreign Company is a partner

(bf) **Firm** where **holding** company of the Foreign Company is a partner

(c) Other Information's relating to related parties to includes :-

(ca) Nature of the **Relationships**

(cb) Description and **nature** of the **transactions**

(cc) **Amount** of the **transactions** with opening, closing, highest and lowest balances

(cd) **Reasons** for the transactions



- (ce) **Material impact** of the **transactions** on the **both** parties
- (cf) Amount of **written off** or **written back** against dues with related parties
- (cg) **Declaration** that the **transactions** were carried at **Arm's Length Price (ALP)**
- (ch) Any other **detail** to **understand** the **impact** of **related parties transactions**.

(d) **Statement of the Repatriation out of the Profits to Includes :-**

- (da) **Amount** of the **profits** as repatriated during the financial year
- (db) **Recipient** of the repatriations
- (dc) **Mode** of the repatriations
- (dd) **Date** of the repatriations
- (de) **Details** of the **city** where repatriation is **not sent** to **residence country** of beneficiary
- (df) **Approval** of the **RBI** or any other authority if any needed

(iv) **Statement of Transfer of the funds**

- (a) Statement of **transfer of funds** including **dividend** is to be **prepared** between place of business of the foreign company in India and any other related party of the foreign company **outside India** including **holding, subsidiary** and **associate companies**
- (b) And also date of transfer and **amount** of the **fund** as **transferred** or **received**

(v) **Filing of the Financial Statements by the Foreign Companies**

- (a) Foreign companies in India are required to **file** a **standalone financial statement** of the **Indian entity** and **consolidated** financial statement of the **foreign companies** along with other required attachments with the office of ROC **within 6 months** from the date of close of the financial year i.e. up to **September 30th** every year.
- (b) However ROC is permitted to **extend** the **period not exceeding 3 months** i.e. up to December **31st** **against** the **special reasons** through filling of an **application in writing** by the Foreign Companies to office of the ROC



(vi) Audit of Accounts of Foreign Companies against Indian Business Operations

Foreign companies in India are required to get an **audit** of the **accounts** related to **Indian business operations** from the practicing **Chartered Accountants** firm as registered with ICAI in India

4. Miscellaneous Provisions

(i) List of Places of Business of the Foreign Companies

Foreign companies in India are required to **file** a **Form No. FC - 3** as **list of place** of the business in India as on **date of the balance sheet** along with the financial statements

(ii) Display of Name etc. of the Foreign Companies-Section 382

- (a) Foreign companies in India are required to **exhibit** the **name** of the **company** and **name** of **country** of **incorporation** in English and a **local language** of the Indian state where place of business in India.
- (b) Foreign companies in India are required to state the **name of company** and **name** of the **country** of incorporation on the documents:
 - (ba) **Letter Heads**
 - (bb) **Bills**
 - (bc) **Letter Papers**
 - (bd) **Notices**
 - (be) **Advertisements**
 - (bf) **Any other official Publication** of the Company

(iii) Service of Notice or Documents on the Foreign Companies -Section 383

Any process, notice or any other document is to be **treated** as **deemed served** where sent by office of the ROC through **posted** or **delivered** by **electronic mode** at the **Indian address** as communicated to the office of the ROC by Foreign Companies.

(iv) Filling of Annual Return by the Foreign Companies-Section 384

- (a) Foreign companies in India are required to **prepare** and to **file** the **annual returns** of the Indian business operations in **Form No. FC-4** **within 60 days** from the date of **close** of the **financial year** i.e. **30th May** every year.
- (b) **Mandatory details for the filling of annual returns:-**
 - (ba) **Details** of the **promoters, directors** and key managerial personnel and



also changes therein since close of the **previous** financial year

(bb) **Details** of the **remuneration** to the directors and key managerial personnel.

(bc) **Details** of the **meeting** of the **members** or class of members, board and its various committees along with details of the attendance.

(bd) **Details** of the **members** and **debenture holders** along with changes therein since the **close** of **previous** financial year.

(be) **Details** of the **holding, subsidiary** and associate companies and firms.

(v) Imprisonment + Fine for contravention on Foreign Companies-Section 392

(a) Foreign **companies** in India are **punishable** with a **minimum fine** of Rs. **1 lac** and **maximum fine** of Rs. **3 lacs** and also **additional maximum fine** of Rs. **50 thousands per day** after continuity of contravention

(b) Every **officer** of the Foreign Companies is also **punishable** with **imprisonment** for **maximum 6 months** or **minimum fine** of Rs. **25 thousands** and maximum fine of Rs. **5 lacs** or **imprisonment + fine both**.

(vi) Cancellation of validity of contracts etc. for non compliance -Section 393

(a) Any **failure** of the provisions under section **379 to 384** of the Companies Act, 2013 by the Foreign Companies shall be **liable for cancellation** of any **contract, dealing or transaction** with the **Indian entities**.

(b) And also the Foreign Companies shall **not be entitled** to bring any **suit**, claim any **set off**, make any **counter claim** or **institute** any **legal proceeding** against the contract, dealing or transaction **until Foreign Companies** have **complied** the provisions of the section **379 to 384** of the Companies Act, 2013.



C. Corporate tax (*Income tax*) for business by foreign companies in India

1. Introduction on Income Tax for Business by Foreign Companies

- (i) *Constitution of India* is permitting the **Central Govt.** and **State Govts.** (*both*) a right to impose the taxes **based on the subjects as distributed** between the Central and State Govts.
- (ii) Central and State Govts. have right to impose in India:
 - (a) **Direct Tax by the Central Govt.**
 - (aa) Income Tax under the Income Tax Act (*ITA*) 1961
 - (ab) Equalization Levy (*EL*) under the Finance Act, 2020
 - (ac) Minimum Alternative Tax (*MAT*) under the ITA, 1961
 - (b) **Indirect Tax by the Central Govt.**
 - (ba) Custom duty under the Customs Act 1962
 - (bb) Goods and Services Tax (*GST*) under the GST Act, 2017
 - (bc) Securities Transaction Tax (*STT*) under the Securities Contract (Regulation) Act, 1956

2. Income Tax for Business by Foreign Companies

- (i) **Under the head Direct Taxes**
 - (a) Income Tax (*Corporate Tax*)
 - (b) Withholding Tax (*TDS*)
 - (c) Transfer Pricing (*TP*) provisions
 - (d) Double Taxation Avoidance Agreements (*DTAAs*) commonly known as Tax Treaties
 - (e) Equalization Levy (*EL*)
- (a) **Corporate Tax for business by Indian + Foreign Companies in India**
 - (aa) *Tax Year* is commencing from April 1st and ending to March 31st in India.
 - (ab) Corporate Tax rates for the *Indian companies* are **minimum @ 15%** and **maximum @ 30%** + surcharge + education cess like **15%, 22%, 25% and 30%**.



(ac) **Unabsorbed losses** and **depreciation** are allowed to be carried forward for set-off against the taxable profits of **subsequent years** up to **maximum 8 years** commencing from the end of year in which the loss is incurred.

(ad) Corporate Tax rate for the **foreign companies** is @ **40% flat**

(ae) Foreign companies are also **including** the Branch offices (**BO**) and Project office (**PO**).

(af) **Unabsorbed losses** and **depreciation** are allowed to be carried forward for set-off against the taxable profits of **subsequent years** up to **maximum 8 years** commencing from the year in which the loss is incurred.

- **Corporate Tax under the MAT**

(ag) Corporate are to pay corporate tax minimum @ 15% of its **book profits** where corporate tax as per **normal** provision of the ITA, 1961 is **less than 15%**.

(ah) Corporate are to be pay MAT minimum 15% **beside** tax as per normal provision of ITA is **Zero** for avoiding **tax evasion** through **excessive** deductions of business **expenses** and excessive deductions of business **exemptions**.

- **Corporate Tax on the Global Incomes**

(ai) Corporate as **residents of India** are to pay tax on the **global** incomes.

(aj) Corporate as **Non-resident** of India (commonly known **foreign** companies) are to pay tax on the incomes as **earned** in India or **sourced** from the India.

(ak) Corporate as Non-resident of India are **not to pay tax** on the incomes as earned outside India or sourced from the **outside India**.

(al) Corporate as Non-resident of India are to pay tax under the head **royalty** or fee for **technical services** @ **10%** on the **gross** amount or rates of tax as provided under the **tax treaty** where Corporate as Non-



resident of India are **not having** any taxable presence like business connection or permanent establishment (**PE**) in India.

- **Corporate Tax on business through the PE or Fixed place of business**

(am) Foreign companies are to pay corporate tax @ **40%** flat on the business as being carried out through PE or fixed place in India where foreign companies are carrying **100% (wholly)** or **not 100% (partly)** business through PE or fixed place of business in India.

(an) Business through **BO** and **PO** are **treated as PE** of foreign company in India. Hence foreign companies having BO or PO are to pay corporate tax @ **40%** flat.

(ao) **LO** in India is **not treated** as PE in India for the foreign companies where **activities** of LO are **restricted** to the liaison between **head office outside India** and Indian parties in accordance to the **approval** as granted by the **RBI** through AD banks.

- **Corporate tax + Surcharge + education and health cesses**

(ap) Corporate are to pay corporate tax + surcharge + education and health cesses.

(aq) Rate for **surcharge** are varying **minimum** from **7%** and **maximum 12%** depend on the **quantum** of the **taxable incomes** and **nature** of the corporate on the amount of **corporate tax** only.

(ar) Rate for **cesses** are @ **4%** on the amount of corporate tax + surcharge

(b) **Withholding tax (TDS)**

(ba) TDS provisions are applicable on the Indian companies and foreign companies (**both**) to deduct a **fixed percentage** of tax by the payer at the **source** to avoid collection of tax at the time of **regular assessment** by corporate tax authorities (**tax authorities**)

(bb) TDS is to be deducted at the **time of credit** to the account of payee or payment to payee **whichever** is earlier.



(bc) TDS is to be deposited by the payer with the tax authorities in prescribed form on **monthly** basis and to file statement (**return**) on **quarterly** or **annually** basis.

(c) **Transfer Pricing (TP)**

(ca) TP provisions under the ITA, 1961 are **applicable** for the **transactions** as **conducted between 2 associate enterprises (AE)**.

(cb) **Transactions** between **2 AEs** should be at **Arm Length Principles (ALPs)** where the prices as used for the transactions between **2 AEs** are to be **compared** with the transactions **between 2 independent entities (IEs)** in **normal** circumstances and with **normal terms and conditions**

(cc) TP provisions are **comparing the price** as used for the transactions between **2 AEs** are **similar** with the **price as used for the transactions with IEs**

(cd) TP **adjustments** are needed for the **overvalued** or **undervalued** transactions made between **2 AEs** comparative to the transactions should be between **2 IEs**.

(ce) **Tax authorities** are to adjust the **normal income** as declared by the taxpayer in India against the transactions made between **2 AEs**.

(cf) Govt. of India (**Govt.**) has also **introduced** certain measures unilaterally in line with **Base Erosion Profit Sharing (BEPS)** recommendations in its domestic tax law to counter base erosion of the taxes.

(d) **Double Taxation Avoidance Agreements (DTAAs)**


(da) DTAAs (commonly known **tax treaties**) are being entered between the **host country** where foreign companies are having income **based on source** and **home country** where foreign companies are **residents**.

(db) Tax treaties are being entered to **avoid double taxation** in host countries and home countries (**both**).



- (dc) Foreign companies (*taxpayers*) in India are permitted to avail *more beneficial* tax provisions between tax treaties and Indian tax provisions (*both*)
- (dd) Govt. has entered into **more than 90 tax treaties** with the countries and specified territories outside India like USA, UK, Mauritius, Singapore and most of European countries etc.
- (de) Taxpayers are permitted to avail foreign tax credit (*FTC*) against the tax payable under the ITA, 1961. Hence taxpayers are permitted to **avoid double taxation** in India (*host country*).
- (e) **Equalization Levy (EL)**
- (ea) Govt. has *introduced* the EL in *June 2016* in India to levy tax on the foreign companies where foreign companies are *not having* any **physical presence, PE or fixed based in India**
- (eb) EL is to be *levied* on the foreign companies having *e-commerce activity through digital interface* *without paying any Income tax* to the tax authorities in India
- (ec) *Payers* of the receiver of the services against *online advertisement* and provision of *digital space* for online advertisement are to **deduct EL @ 6%** on the payments to the foreign companies.
- (ed) *Payers* of the receiver of the supply or services from the *e-commerce operator* (foreign companies) are to **deduct EL @ 2%** on the payments to the foreign companies.
- (ef) *Payers* of the fee for *technical services* or *royalty* are to **deduct EL @ 0%** on the payments to the foreign companies.

3. Liberalization and Reductions in the rates of taxes under the ITA, 1961

- (i) **Reduction in rate of Corporate Tax (Income Tax) for new manufacturing companies under section 115BAB of the ITA, 1961**
- **Reduction** in the Corporate Tax Rate is allowed from **30%** to **15%** (*effective rate* of tax is **17.16% including surcharge + cesses**) for establishing new Manufacturing units by 

the foreign or Indian companies where companies are *incorporated* after *October 1st, 2019* + manufacturing should *commenced* up to *March 31st, 2024*

(ii) *Reduction in rate of Income Tax for the non manufacturing companies under section 115BA of the ITA, 1961*

- **Reduction** in the Income Tax Rate is allowed from *30%* to *25%* (effective rate of tax is *26, 27.82* or *29.12%* including surcharge + cesses) **without** **subject to the satisfaction of certain terms and conditions**

(iii) *Reduction in rate of Income Tax for the non manufacturing companies under section 115BAA of the ITA, 1961*

- **Reduction** in the Income Tax Rate is allowed from *30%* to *22%* (effective rate of tax is *25.17%* including surcharge + cesses) **with** **subject to the satisfaction of certain terms and conditions**

(iv) *Abolition of the Dividend Distribution Tax (DDT)*

- Govt. has **abolished the DDT** of *15% + surcharge* was payable by the companies against **declaration of dividend** to the shareholders. Hence Incomes under the head dividend was **not taxable** in the **hands of shareholders**.

(v) *Reduction in the Minimum Alternate Tax (MAT) Rate*

- Govt. has **reduced the MAT** from *18.5%* to *15% + surcharge* on the **book profits** of the companies.



D. Goods and Services Tax (GST) for business by foreign companies in India

1. Introduction on GST for business by foreign companies in India

- (i) GST is a **comprehensive consumption tax** on supply of goods and services
- (ii) GST is allowing to avail input tax credits (**ITC**) **between the goods and services**
- (iii) GST is allowing to file the **returns** based on **monthly, quarterly or annually**
- (iv) GST is **mandatory** required **E-way Bill** documentation for **physical movement of goods**

2. Dual Structuring under the GST

(i) Intra-state transactions

- (a) **Location of supplier and place of supply (PoS) in same State**
- (b) **Central GST (CGST)**
- (c) **State GST (SGST)**
- (d) **Union Territory GST (UTGST)**

(ii) Inter-state transactions

- (a) **Location of supplier and PoS in different States**
- (b) **Integrated GST (IGST)**

3. GST not applicable on the followings:

- (i) **Basic Customs Duty**
- (ii) **Stamp Duty**
- (iii) **Alcohol for human consumption**
- (iv) **Petroleum products**
- (v) **Taxes on professions, trades, callings and employments**

4. GST Rates applicable on the followings:

- (i) **@ 0% on the Essential Food, Medicines and Services**
- (ii) **@ 5% on the Precious metals and other Common use items**
- (iii) **@ 12% on the Food, Industrial and Consumer Products**
- (iv) **@ 18% on the other Items as standard rate**
- (v) **@ 28% + Additional Cess on the Demerit goods and luxury goods**



5. Important Miscellaneous Features

- (i) **GST registrations + compliances** are **mandatory** for the taxpayers where their **aggregate annual turnover** is **exceeding 20 Lacs** against supply of the **services** and **40 Lacs** against **exclusive supply of the goods**. Hence taxpayers are required to obtain mandatory registration under GST Act, 2017 where their hybrid (**mix**) annual turnover is exceeding **20 Lacs** against supply of services + supply of goods (**both**)
- (ii) **Generally** GST registrations + compliances are **not mandatory** for the Foreign companies those are supplying the goods and services **directly** to India **from outside India**.
- (iii) **Separate** GST registrations are required for **each state** where businesses are being carried out in **more than 1 state**.
- (iv) **Multiple** GST registrations are permitted for conducting the **various places** of business **within the same State**
- (v) **Composition dealer scheme** for the GST registrations is available for the **small taxpayers with reduced compliance burden** on the taxpayer.



E. Legal Obligations for Establishing of Foreign BO, LO or PO in India

1. Introduction on the Establishing of Branch office (BO) Liaison Office (LO) or Project Office (PO) in India

(i) Eligible Foreign entities are permitted to establish BO or LO (Commonly known as **Representative office**) and PO in India under **general** or **specific approval** route

(ii) **List of Eligible 5 Foreign Entities Includes:**

- (a) Foreign **Companies**
- (b) Foreign Non Govt. Organizations (**NGOs**)
- (c) Foreign Non Profit Organizations (**NPOs**)
- (d) Foreign Govt. **Bodies**
- (e) Foreign Govt. **Departments**

2. Permission for the Establishment of the BO or LO in India

(i) **General Approval by the RBI (Commonly known as the RBI Route)**

- **Foreign** eligible entities are required to file an **application** with the RBI through designated AD Category-I **bank** for establishing BO or LO in India in Form **FNC** under **general** approval route if foreign entity is engaged in the sector where **100% FDIs** are permitted in India

(ii) **Specific Approval by the Govt. of India (Commonly known as Govt. Route)**

- **Foreign** entities are required to file an **application** with the RBI through designated AD Category-I bank for establishing BO or LO in India in Form **FNC** under **specific** approval route where the RBI is required **specific approval** from the concerned **Ministry** or **deptt.** of Govt. of India in the following circumstances.

- (a) **Establishment** of BO or LO by the **foreign** NGOs, NPOs, Govt. bodies or Govt. deptt
- (b) **Applicant** is registered or incorporated in **Pakistan** for establishing at **any** place in India
- (c) **Applicant** is registered or **unregistered** entity in **7 Countries** for establishing a BO or LO in **J&K** or North East or **Andaman and Nicobar Island**

(ca) **Bangladesh**



- (cb) **Sri Lanka**
- (cc) **Afghanistan**
- (cd) **Iran**
- (ce) **China**
- (cf) **Hong Kong**
- (cg) **Macau**

(d) **List of 5 Principal business of the applicant:**

- (da) **Defence Sector**
- (db) **Telecom Sector**
- (dc) **Private Security Sector**
- (dd) **Information and Broadcasting Sector**
- (de) **Foreign entity is engaged in the sector where 100% FDIs are not permitted in India**

(iii) **Establishment of the BO or LO by other Foreign Entities Not Permitted in India**

(a) **List of Other Foreign entities Include:**

- (aa) **Partnership firm**
- (ab) **Association of Individuals (AOI)**
- (ac) **Proprietary Concern (Individual)**

(b) Hence other Foreign entities are not permitted to establish a BO or LO in India

(iv) **List of additional Mandatory Conditions for Approval under the RBI Route**

(a) **The RBI is required to consider 2 criteria's**

- (aa) **Track record**
- (ab) **Net worth**

(b) **Track Record for established of BO or LO in India**

(ba) **For BO**

- Foreign entity should have profit making track record during immediate preceding 5 financial years in home country

(bb) **For LO**



- Foreign entity should have **profit making track** record during immediate preceding **3** financial years in **home country**

(c) **Net Worth for establishment of BO or LO in India**

- Net worth to includes total paid up capital+ Free Reserves - Intangible Assets as per latest audited balance sheet or account statement as certified by Certified Public Account (CPA) or any Registered Account Practitioner

(ca) For **BO**

- **Minimum** net worth should be **USD 1 Lac** in **home country**

(cb) For **LO**

- **Minimum** net worth should be **USD 50** thousands in **home country**.

3. **Application for Establishment of the BO or LO in India**

(i) **Submission of Application for Establishment of BO or LO in India**

- (a) (aa) Application for establishment of BO or LO should be forwarded by **foreign entity** to the RBI through designated AD Category-I bank for **approval**

(ab) Designated AD Category-I bank is required to obtain Unique Identification Number (**UIN**) from General Manager in charge, Foreign Exchange Department, Central office Cell, the RBI, New Delhi, Regional office, **6** Parliament Street, New Delhi- **110001** along with prescribed documents

(b) **List of the Documents**

- **English** version of

(ba) **Certificate** of incorporation or registration and Memorandum and Article of Association (**M&A**) and also

(bb) **Audited** Balance Sheet as attested by Indian Embassy or notary public in country of registration **outside** India

(c) **Letter of the Comfort**

- Letter of Comfort (**LOC**) from **parent company** is to be submitted where applicant **not satisfying** the eligibility criteria likes track record and/or net worth.

(d) **Due Diligence**

- Designated AD category-I bank is required to do due diligence relating to :

(da) Applicant **background**

(db) **Antecedents** of the promoter

(dc) Nature and location of **activity**

(dd) **Source** of fund

(de) **Compliance** with KYC norms **before** forwarding application along with comments or recommendations to the RBI for obtaining **UIN** number and approval.

(ii) **Allotment of the UIN**

- The **RBI** is required to allot a unique Identification Number (**UIN**) to the BO or LO

(iii) **Allotment of the PAN**

- BO or LO is required to obtain a **PAN** from the Income Tax Authorities in India

4. **Permitted and Not Permitted (Prohibited) Activities for the LO in India**

(i) **Permitted Activities for the LO in India**

(a) **Representing** in India on behalf of parent company or the group companies

(b) **Promoting** the export or import from India

(c) **Promoting** technical or financial collaborations between parent or group companies and entity in India

(d) **Acting** as communication channel between parent entity and entity in India

(ii) **Not Permitted (Prohibited) Activities for the LO in India**

(a) **Not permitted** to undertake any **business** activity in India

(b) **Not permitted** to earn any **income** in India

(c) **Not permitted** to incur any **expenses** other than through direct inward **remittances** in foreign exchange from head office outside India



5. **Foreign Insurance Company, Bank or Law Firm for establishing LO**

(i) **LO of the Foreign Insurance Company in India**

- Foreign Insurance company is permitted to establish a LO after obtaining of **approval** from Insurance Regulatory and Development Authority (**IRDA**) as set-up in India in addition to the RBI.

(ii) **LO of the Foreign Bank in India**

- Foreign bank is permitted to establish a LO after obtaining of **approval** from department of Banking Operations and Development (**DBOD**) of the RBI in India

(iii) **LO of the Foreign Law Firm in India**

- **Fresh** permission or **renewal** for LO of Foreign law firm is **not permitted**. However **already** approved are permitted to continue till **date** of its **expiry**.

6. **Extension of Approval of a LO Permitted in India**

(i) Designated AD Category - I bank is permitted to extend the **validity** of LO for maximum period of **3** years from the date of expiry of original or extension where applicant has also complied the following **terms** and **conditions**

(a) LO should have **submitted** the Annual Activity Certificates (**AACs**) for all previous year

(b) LO should have **maintained** an account with designated AD Category -I bank is in accordance to terms and conditions as stipulated in approval

(ii) Extension is to be granted by AD Category-I bank within **1** month from date of request under intimation to the RBI along with reference number of original approval letter and UIN

(iii) **Extension of Validity of the LO of Insurance entity and Bank in India**

- Application for extension of validity of period of LO of insurance entity and bank is to be submitted to **IRDA** and **DBOD** respectively



7. Permitted and Non-Permitted (Prohibited) Activities for the BO in India

(i) Manufacturing or Trading Activities Permitted for the Parent Entity or Group Companies Outside India

- Companies incorporated *outside* India and also *engaged* in manufacturing or trading activities *Outside* India are permitted to set up BO in India to *represent* the parent or group companies and also to undertake following *business* activities in India. Hence BO is *not permitted* for manufacturing or trading activity in India.

- (a) *Export* or *Import* of goods and procurement of goods for export and sale of goods after import is permitted on *wholesale* basis
- (b) *Rendering* of professional or consultancy services
- (c) *Carrying* out research work in which parent company is *already* engaged
- (d) *Promoting* for technical or financial collaborations between Indian companies and parent company or group companies
- (e) *Representing* the parent company or group companies in India
- (f) *Rendering* of Services for information technology and development of software in India
- (g) *Rendering* of technical support to the products as supplied by parent company or group companies
- (h) *Operating* the foreign airline or shipping activities in India.

(ii) Retail Trading Activities Not Permitted in India

- Retail trading activities are *not permitted* by a BO in India

(iii) Manufacturing or Processing Activities Not Permitted for the BO in India

- (a) Manufacturing or processing activities are *not permitted* for BO in India
- (b) However *permitted* through incorporation of a *subsidiary* company in India

(iv) Remittances against Profits by the BO

- (a) BO is permitted to remit Outside India against profits after payment of *taxes*
- (b) Following *documents* are to be submitted for the remittances



- (ba) *Certified* copy of audited balance sheet and profit and loss account of the BO in India
- (bb) *Certificate* from Chartered Accountant certifying the manner of arriving *remittable* profit and also entire remittable profit is earned from *permitted* activities by BO and also profit *not include* a profit on *revaluation* of assets of the BO in India

8. *Establishment of the Project Office (PO) Permitted in India*

(i) *Project Office (PO) by the Foreign Entities*

- (a) The RBI has granted *general* or *specific approval* route to the foreign companies to establish a PO in India
- (b) However PO should secure a *contact* from *Indian* entity to execute a project in India
- (c) (ca) Project should be funded by *inward remittance* from Outside India *or*
(cb) Project should be *funded* by bilateral or multilateral *International Financing Agency* *and* also
(cc) Project should be *cleared* by an *appropriate authority* in India *and* also
(cd) The *Indian* Entity as awarding the contract should obtain a *term loan* from Public Financial Institution or *bank* for the project in India
- (d) In *absence* of the above mentioned, under the para (a) to (c) foreign entity is required to obtain a *specific permission* from the RBI through designated AD Category – I bank in India.

(ii) *Bank Account for the PO*

- Designated AD category I bank can open *non-interest* bearing foreign currency account for the PO in India *after satisfaction* of the followings terms and conditions
 - (a) PO should be established with *general* or *specific approval* route from the RBI *and* also from appropriate project sanctioning Authority
 - (b) Contract should be specifically provides for the *payment in foreign currency* only.



- (c) PO is permitted to open **2** foreign currency **accounts** only with the same designated AD category-I bank one in **USD** and other in **non USD**
- (d) Permissible **debits** to the account are to be project related **expenditures** and **permissible credits** to the account are to be foreign **currency** receipts from foreign entity only.
- (e) Designated AD Category-I bank is required to ensure that **permissible debits** and **credits** are allowed in the Foreign currency account and also account should be **100% scrutinized** by Concurrent Auditor of bank
- (f) Foreign currency account should be **closed** at time of **completion** of **project**

(iii) Remittances by the PO

- Designated AD Category-I bank is permitted to remit by the PO as **pending winding up** or completion of project after **satisfaction** of the followings terms and conditions
 - (a) PO should obtain an **auditor certificate** relating to payment of all liabilities including income tax etc.
 - (b) PO should submit an **undertaking** as **remittance** will **not affect** the completion of project in India and also **shortfall** of fund to complete the project **if any** will be received through inward **remittance** from outside India

(iv) Inter Project Transfer of the Fund

- Prior **Approval** from the **RBI** is required for inter project transfer of fund in India

(v) Reporting to the RBI by PO in India

- (a) Foreign entity is required to furnish the followings **details** within **2 months** from the date of establishment of PO to the RBI through Designated AD Category -I bank in form **FNC**
 - (aa) **Name** and address of the foreign entity
 - (ab) Reference number and date of letter against the contract awarded in accordance to Regulation No. **5(ii)** of Notification No. **FEMA 22/2000-RB**, dated **May 03, 2000**
 - (ac) Particulars of **authority** as awarding the project or contract to the PO



- (ad) Total **amount** of the contract
- (ae) **Address**, e-mail and telephone number of the PO
- (af) **Tenure** of the PO
- (ag) Brief **detail** of the **project** undertaken
- (ah) Name of designated AD Category - **1 bank** for the **opening** of foreign currency account in USD and **non USD**
- (ai) **Undertaking** that the PO is eligible to avail **General Permission** in accordance to Regulation No. **5(ii)** of Notification No. **22** dated May **03,2000** read with Notification No. **95** dated July **02,2003**.
- (b) PO is required to **submit a certificate** from Chartered Accountant showing the status of the project and also confirming that the accounts of PO are audited and **activities as undertaken** are in accordance to **general or specific permission** by the RBI

9. **Special Provisions for the BO, LO or PO in India**

(i) **Purchase of the Immovable Property in India by BO,LO or PO**

- (a) BO or PO in India is permitted to purchase of immovable property if **necessary** or incidental to **carry on the activities** of the BO or PO as case may be
- (b) **Payments** for the purchase of immovable **property** are to be made out of the foreign inward **remittance** through normal **banking** channel only
- (c) **Declaration** is to be submitted to the **RBI** in Form IPI within **90 days** from the date of acquisition of the immovable property
- (d) This property can be **mortgaged** with a bank as security for the borrowings.
- (e) **Sale proceeds** of the property on winding up are to be **repatriated** with **approval** from the **RBI**
- (f) However an **approval** from the **RBI** is also required for acquisition of **immovable property** by an entity incorporated in the **10 countries**
- (fa) **Pakistan**



- (fb) **Bangladesh**
- (fc) **Sri Lanka**
- (fd) **Afghanistan**
- (fe) **China**
- (ff) **Iran**
- (fg) **Nepal**
- (fh) **Bhutan**
- (fi) **Hong Kong**
- (fj) **Macau**
- (g) (ga) **LO** from **any** country is **not permitted** to acquire an immovable property in India
- (gb) However **LO** from **any** country is permitted to acquire immovable property on lease **not exceeding 5** years

(ii) General Conditions for the BO or LO

- (a) Entities from **Nepal** is permitted to establish a **LO** but **not permitted** to establish a **BO** in India
- (b) **BO** or **LO** is required to open **non-interest** bearing **INR** current account in India
- (c) **Approval** from the **RBI** is required to **transfer** of assets to subsidiaries or other **BO**
- (d) Term deposit exceeding **6 months** are **not permitted** against **temporary surplus** funds of the **BO** or **LO**
- (e) However term deposits are **not permitted** to a **shipping** or **airline** Company working in India
- (f) **Regularization** of **BO** or **LO** is required if established pre **FEMA** i.e **before 1999**

(iii) Additional Reporting to Police for New Setting up BO or LO

- Following **additional** reporting's are required for setting up of **BO** or **LO**



- (a) Submit a **report** containing certain information's within **5 working days** of BO or LO become functional to the Director General of Police (**DGP**) of the **State** or Union Territory
- (b) Same **report** is to be submitted on **annual** basis to DGP along with **AAC** in India

10. Miscellaneous Provisions for the BO or LO in India

(i) Establishment of a BO in SEZs

- (a) The RBI has granted **general permission** to the foreign companies for establishing of a BO or unit in SEZ area to undertake the **manufacturing and service** activities
- (b) **General permission** is available after satisfaction of the followings terms and conditions
 - (ba) Unit should be functioning in sector where **100% FDIs** are permitted
 - (bb) Unit should **comply provisions** under the Section **380 to 386** of the Companies Act, **2013**
 - (bc) Unit should function on **standalone** basis only.

(ii) Winding up of a BO in India

- BO is required to approach AD Category -I bank along with documents mentioning under **closure** of the BO for **remittance** of winding up proceeds Outside India

(iii) Application for Additional establishment of BO or LO in India

- (a) Application for **additional** BO or LO is to be submitted to the **RBI** through designated AD Category -I Bank where **specific approval** is required for establishing of a BO or LO
- (b) **Fresh FNC** form is to be submitted for an additional BO or LO
- (c) However documents are **not** to be **re-submitted** where there is **no change** in **already** submitted documents
- (d) **Justification** for the **additional BO** or LO is to be submitted where BOs or LOs are **exceeding** by **4** in number in India
- (e) Applicant is to be required to identify one office as **nodal office** to coordinate



the activities of all offices in India

(iv) Submission of Annual Activity Certificate (AAC) for BO or LO in India

- (a) BO or LO is required to submit an AAC as on March 31 up to September 30 of each year to the followings
 - (ba) Designated AD Category-I bank in India
 - (bb) DGIT (International Taxation) New Delhi
 - (bc) DGP of the State or Union Territory
- (c) (ca) AAC is also to be submitted by the BO or LO or
 - (cb) By the Nodal office where multiple BO or LO are existed in India
- (d) Designated AD Category -I bank is required to scrutinize the AAC to ensure that activities undertaken by BO or LO are in accordance to terms and conditions of the RBI
- (e) Designated AD Category -I bank is required to report to the RBI where statutory auditors have given the negative comments or reports

(v) Closure of the BO or LO

- BO or LO is required to submit the followings documents at time of closure of the BO or LO
 - (a) Copy of approval for establishing of the BO or LO in India
 - (b) Certificate from the statutory auditors for computation of remittable amount
 - (c) NOC from the Income Tax authority for remittance
 - (d) Undertaking from the applicant that no legal proceeding is pending in any court in India
 - (e) Report from the ROC relating to compliance of provisions of the Companies Act, 2013
 - (f) Any other document as specified at time of granting an approval

(vi) Role of Designated AD Category - I Bank at time of Closure of the BO or LO

- (a) Designated AD Category- I bank is required to ensure that the BO or LO has submitted all the AACs



(b) Also to **report** to the **RBI** along with a **declaration** stating that all necessary documents as submitted by the BO or LO are scrutinized and found in order.

(vii) Approval by the RBI for establishment of a LO

(a) **Generally** the RBI is taking approximately **40 days** in granting a permission for establishment of a LO in India

(b) **Generally** the RBI is granting a permission for maximum period of **3 years**

(c) **Generally** the RBI is permitting an extension for maximum period of **3 years each time**

(d) LO is required to **close** the establishment in India once original or extended approval is **expired**. However LO is permitted to **convert** the establishment into a **Joint venture** or wholly owned subsidiary (**WOS**) company in India

(viii) Registration and Annual filings for the BO or LO with the ROC

(a) BO or LO is required to **register** with the ROC within **30 days** from the day of its establishment through filing of e-form **FC-1**

(b) BO or LO is required to file e-form **FC-3** and **FC-4** for **reporting** the financial statement and **annual return** respectively.

11. Conclusion on Establishment of BO, LO or PO in India

(i) Establishment of BO or LO is permitted under the head

(a) **General** permission (**RBI** approval route) and **specific** permission (**Govt.** approval route)

(ii) Hence certain restrictions are existed where specific permission is required like

(a) **Parent entity** is located in **8 countries** i.e. **Pakistan and China etc.**

(b) **4 Sensitive sectors** i.e. **defense etc.**

(c) **NGOs and NPOs**

(d) Sector where **100% FDIs** are **not permitted** in India

(iii) BOs or LOs are **not permitted** for carrying **many** activities in India. Hence establishment of **Indian** (subsidiary) company in India is a solution for the **not**

permitted activities in India.

- (iv) Establishment of a *PO* is permitted in India *after satisfaction* certain terms and conditions
- (v) *BOs* or *POs* are *permitted* to purchase the *immovable properties* for necessary purposes only. Hence *LOs* are *not permitted* to purchase the immovable properties in India. However *LO* is permitted to *take on lease* for a maximum period of *5 years*
- (vi) *BOs*, *LOs* or *POs* are *permitted* to *close* their establishment *after satisfaction* of the certain terms and conditions
- (vii) *BOs* or *LOs* are required to submit *AAC annually* to the following offices. Hence *PO* is *not required to submit AAC*
 - (a) Designated AD Category- *I Bank*
 - (b) *DGIT*
 - (c) *DGP*



F. Miscellaneous Legal Obligations for Business by Foreign Companies in India

1. Legal compliances under the head Accounting + Book-keeping + Payroll

- (i) Foreign companies are required to **maintain the books of accounts** in accordance to **Indian accounting standards or norms** along with the supporting documentations in accordance to the ICAI and the ITA, 1961 in India.
- (ii) Foreign companies are also required to **implement** the monthly payroll processing systems (**MPPS**) for its employees and also to **obey the labor laws** and regulations for the employees in accordance to the applicable Acts in India.

2. Legal compliances under the head Income Tax

(i) Annually filling of the Income-tax return (ITR) for the companies

- (a) Foreign companies are required to file their **annual ITR within stipulated time** under section **139(1)** of the ITA, 1961.

(b) Due dates for filling of ITR by the Foreign + Indian companies:

- (ba) ITR to be filed by the Foreign + Indian companies **up to October 30th each year** where TP provisions are **not applicable**.
- (bb) ITR to be filed by the Foreign + Indian companies **up to November 30th each year** where TP provisions are **applicable**.

(ii) Filling of Form No. 49C by the foreign companies for the LO's

- Foreign companies are required to file Form No. 49C for **having physical presence** in India through **liaison office** in India **up to May 30th every year**.

(iii) Withholding tax (WHT) (commonly known as TDS) compliances:

- (a) Foreign + Indian companies are required to **deduct the TDS** on specific category of the payments in accordance the ITA, 1961
- (b) Foreign + Indian companies are required to **deposit the TDS** with the tax authorities within specified time in accordance the ITA, 1961.



(c) Foreign + Indian companies are required to **file quarterly TDS statements (Returns)** and also to **generate and to issue quarterly TDS certificates** to the payees.

(iv) **Filing of Personal ITRs by the foreign + Indian employees:**

(a) Foreign companies are required to **issue annual TDS certificate** in **Form No. 16** declaring the payments **under the head salaries** as **100% (fully)** taxable and **not 100% (partly)** taxable along with **amount of TDS** as deducted and also deposited in accordance the ITA, 1961.

(b) Foreign + Indian employees are required to **file their annual ITR up to July 31st each year** with the tax authorities **based on the Form No. 16** as issued by the Foreign + Indian companies in accordance the ITR, 1961.

(v) **Annual Tax Compliances under TP provisions:**

(a) Foreign + Indian companies are required to **obtain an annual report in Form No. 3CEB** from the practicing chartered accountant in India in accordance the ITA, 1961

(b) TP provisions are applicable on the Foreign + Indian companies where **international transactions with the AEs** are existing during the year under consideration.

(c) Foreign companies are required to **file their ITRs up to Nov 30th each year.**

(vi) **Applicability of provisions under the GST Act, 2017**

(a) Foreign Companies are required to **deposit the GST returns** on monthly or **quarterly basis** against supply of the goods and services through **manufacturing and trading** as carried out in India

(b) Foreign + Indian Companies are also required to **file the monthly** or quarterly **returns** within specified times in accordance the GST Act, 2017.

3. Legal compliances under the head Statutory Audit + Tax Audit

(i) (a) Foreign + Indian companies are required to **obtain the Statutory Auditors reports** from the Practicing Chartered Accountant and also to **prepare the**



annual financial statements in accordance the accounting standards as issued by the Institute of Chartered Accountant of India (ICAI)

- (b) Statutory auditors are required to **audit about fulfillment of the legal compliances** in accordance to **any law on the land of India** like the FEMA 1999, Companies Act 2013, Accounting standards as issued by the ICAI, **PMLA 2002** and **Benami Property Act 2016 etc.**
- (ii) Foreign + Indian companies are required to **obtain Tax Audit Report (TAR)** from the Practicing Chartered Accountant in India where **annual gross receipts** or turnover is **exceeding 1 crore against the business** as conducted by the foreign companies.

4. Legal compliances under the head Companies Act, 2013

- (i) (a) **Foreign** companies are required to **file annually Form No. FC-3 up to September 30th each year** with the office of Registrar of Companies (ROC) for the office, LO or PO along with its **annual financial statements, consolidated financial statements of the parent company**, list of place of business in India.
- (b) **Foreign** companies are also required to **file annually Form No. FC-4 up to May 30th each year** with the office of ROC as Annual return
- (ii) **Foreign** companies **through Indian wholly owned subsidiary (100% Indian subsidiary)** or **Indian joint venture** are required to **file annually form AOC-4 and MGT-7 up to October 30th and November 29th each year respectively**
- (iii) **Foreign** companies **through Indian LLP** are required to **file annually Form 8 and Form 11 up to May 30th and up to October 30th each year respectively** for the meetings between the Partners and other requirements in accordance the LLP Agreement and LLP Act 2008

5. Legal compliances under the head Shops and Establishments Act

- (i) Foreign + Indian companies are required to **obtain a registration under the Shops and Establishments Act.**
- (ii) Shops and Establishment Act is **dealing mainly with the employees related rules and regulations.**



6. Legal compliances under the head FEMA, 1999

(i) Annual activity certificate (AAC) for LO, BO or PO

- (a) Foreign companies are required to obtain annually AAC from the Practicing Chartered Accountants in India against the activities as carried out by the LO, BO or PO in accordance FEMA, 1999 through the RBI
- (b) Foreign companies are required to file annually AAC up to September 30th each year with the RBI through AD banks and with the Director-General of Income-tax (DGIT).

(ii) Filing of Foreign Liability and Assets (FLA) Return with the RBI

- (a) Foreign companies through Indian Wholly Owned Subsidiary or Indian Joint Venture are required to file annually the FLA return with the RBI up to July 15th each year with unaudited financial statements and up to September 30th each year with the audited financial statements where difference between unaudited and audited financial statements are substantial
- (b) Foreign companies through Indian Wholly Owned Subsidiary or Indian Joint Venture are required to report to the RBI for transfer of shares to or from and also for fresh allotment of shares to the non residents of India

7. Legal compliances under the head Industrials and Labor Laws

Foreign + Indian companies are required to obey the additional compliances for social security of the employees of the industries and manufacturing concerns like provident fund, employees state insurance (ESI) factories, building, construction land, pollution, water, fire, waste management and trade license etc.



G. **PLI Scheme for Business by Foreign + Indian Companies in India**

1. **Introduction of Production linked Incentive (PLI) Scheme in India**

- (i) Govt. has **announced** the **PLI scheme** through the Finance Act, 2021 with **initial outlay of USD 26 billion** under the **make in India** program to generate **additional employment opportunities** for the residents of the India.
- (ii) PLI Scheme is **permitted** for the **13 key sectors** with an expected **turnover** of **USD 500 billion** in next 5 years.
- (iii) **List of PLI schemes for initial outlay of USD 26 billion** is as under:

S.No	Sectors	Ministry or Department	5 years' outlay (USD 26 billion)
(a)	Advance Chemistry and Cell (ACC) Battery	NITI Aayog, Department of Heavy Industries	9.27%
(b)	Electronic or Technology Products	Ministry of Electronics and Information Technology (MEIT)	24.24%
(c)	Automobiles and components	Department of Heavy Industries	29.22%
(d)	Pharmaceuticals Drugs and Medical devices	Department of Pharmaceuticals	11.24%
(e)	Telecom and Networking products	Department of Telecom	6.25%
(f)	Textile products	Ministry of Textiles	5.47%
(g)	Food products	Ministry of Food Processing Industries	5.58%
(h)	High efficiency Solar PV modules	Ministry of New and Renewable Energy (MNRE)	2.30%
(i)	White goods (ACs and LED)	Department for Promotion of Industry and Internal Trade (DPIIT)	3.19%
(j)	Specialty steel	Ministry of Steel	3.24%
Total			100%

2. **Major Sectors for the PLI Schemes in India**

- (i) **AUTOMOTIVE** sector for enhancing the manufacturing capabilities
- PLI Scheme for Auto Components and **Automobiles** for enhancing India's manufacturing capabilities and exports



- (ii) **AVIATION** sector for catalyzing growth in the **Drone** sector
- PLI Scheme for Drones and **Drones components** through the Liberalized Drone Rules, **2021**
- (iii) **TELECOM** sector for attracting the global investments (**FDIs**)
- PLI Scheme for Telecom and **Networking Products** to attract large global investments and to help domestic companies become top exporters
- (iv) **FOOD PROCESSING** sector for boosting the exports and adding more goods
- PLI Scheme for Food processing sector for promoting **Indian brands** of food products
 - Boost exports and ensure **remunerative prices** for the farm produce
- (v) **CHEMICALS** sector for enhancing the domestic procurements
- PLI Scheme in **advance chemistry cell battery** for enhancing India's manufacturing capabilities and promoting exports
- (vi) **TEXTILES** sector for promoting the production of specific fabrics and textiles
- PLI Scheme for Textiles aimed at **boosting** the domestic production of manmade fiber (**MMF**) fabric, MMF apparels and technical textiles



Published By



CA. Satish Agarwal

B.com (Hons) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femaindia.com

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